

REMARKS/ARGUMENTS

Claims 1, 2 and 6-11 are currently pending in this application. No new amendments have been presented.

Claim Rejections – 35 U.S.C. §112

In the Action, claims 1, 2 and 6-10 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicants traverse this rejection.

This Section 112 rejection is the only remaining rejection in this case. The undersigned had previously discussed this case with the Examiner along with the requirement currently in the claims that the members of each weft pair are in adjacent contact at the exchange points. It was believed that this was in fact illustrated in Figure 1, although as noted in the Action, it is not explicitly stated in the specification. The undersigned noted to the Examiner that the inventor indicated that this property is inherent in the claimed fabric and this would be understood by a person of ordinary skill in the art. The Examiner indicated that an inherency argument would need to meet the requirements of M.P.E.P. §2163.07(a), namely:

By disclosing in a patent application a device that inherently performs a function or has a property, operates according to a theory or has an advantage, a patent application necessarily discloses that function, theory or advantage even though it says nothing explicit concerning it. The application may later be amended to recite the function, theory or advantage without introducing prohibited new matter...."To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q. 2d. 1949, 1950-51 (Fed. Cir. 1999).

The Stone Declaration from first named inventor, Richard Stone, demonstrates that the feature at issue, namely the members of each weft pair being in adjacent contact at each of the exchange points, would be an inherent property that would be understood by a person of ordinary skill in the art from the specification and drawings for this application. Specifically, paragraph 5 of the Stone Declaration indicates that: "a person of ordinary skill in the art would understand from the original specification and drawings that the members of each weft pair must, by definition, be in adjacent contact at each exchange point based on the original disclosure provided." Paragraphs 6, 7 and 8 of the Stone Declaration point out the specific support in the specification with respect to the "identical path" traveled by the members of each weft pair. Paragraphs 9 and 10 of the Stone Declaration indicate that a person of ordinary skill in the art would recognize based on the specific weave pattern shown in Fig. 2A and Fig. 2B, as well as by the weave diagram of Fig. 4, that the weave can only be accomplished if the first weft yarn pair is woven according to a first shedding arrangement while the second weft yarn pair utilizes a similar, but second, shedding arrangement. Based on this shedding arrangement, the weft yarns in each pair must, of necessity, come into contact at their exchange points (90) while the next weft yarn pair would be separated from the first pair due to the different shedding arrangement. This next weft yarn pair would also be in contact at its exchange points (90) even though the first and second weft yarn pairs are separate from one another.

Mr. Stone, who would be a person considered to be of at least ordinary skill in the art, makes it clear by his Declaration that this claimed contact at the exchange points by the members of each weft yarn pair is inherent and would be so understood by a person of ordinary skill in the art.

In view of the Stone Declaration and the specific support provided, it is submitted that it has been established that the members of each weft pair being in adjacent contact at each of the exchange points is necessarily present in the triple layer fabric disclosed and shown in this application. Mr. Stone makes it clear that

this contact between the members of each weft yarn pair at the exchange points occurs of necessity, and it not merely probable or possible. In view of this, it is submitted that this feature is inherently disclosed in the specification and drawings as filed. Accordingly, the Section 112, first paragraph rejection of the claims should be withdrawn.

Conclusion

If the Examiner believes that any additional minor formal matters need to be addressed in order to place the present application in condition for allowance, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience. The undersigned also wishes to thank the Examiner for the time and courtesies extended in connection with the telephone discussions on this matter.

In view of the foregoing Remarks and the Stone Declaration, it is respectfully submitted that the present application, including claims 1, 2 and 6-11, is in condition for allowance, and a Notice to that effect is respectfully requested.

Respectfully submitted,

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